



AGENDA

IDAHO WATER RESOURCE BOARD

Water Supply Bank & Mitigation Bank Committee Meeting No. 2-20

Friday, December 18, 2020

2:30 p.m. (MST)

Brad Little

Governor

Roger W. Chase

Chairman

Pocatello

District 4

Jeff Raybould

Vice-Chairman

St. Anthony

At Large

Vince Alberdi

Secretary

Kimberly

At Large

Peter Van Der Meulen

Hailey

At Large

Albert Barker

Boise

District 2

John "Bert" Stevenson

Rupert

District 3

Dale Van Stone

Hope

District 1

Jo Ann Cole-Hansen

Lewiston

At Large

Water Center
Conference Rooms 602 C, D / Online Zoom Meeting
322 E. Front St.
BOISE

(This meeting will be conducted using guidance in response to the public health emergency caused by the COVID-19 pandemic. Masks are required & in person attendance is limited. Call or email if you have questions: jennifer.strange@idwr.idaho.gov)

Board Members & the Public may participate via Zoom

[Click here to join our Zoom Meeting](#)

Dial in Option: 1(253) 215-8782

Meeting ID: 956 8769 0013 Passcode: 467928

1. Introductions and Attendance
2. Amendments to the Upper Snake River Rental Pool Procedures
3. Draft Legislation to Create IC §42-1765B*
4. Use of the Boise River Rental Pool to Mitigate Impacts Associated with Construction at Anderson Ranch Dam
5. Other Items
6. Adjourn

Committee Members: Jo Ann Cole-Hansen, Chairman, Vince Alberdi, Dale Van Stone, and Roger Chase

* Action Item: A vote regarding this item may be made this meeting. Identifying an item as an action item on the agenda does not require a vote to be taken on the item.

Americans with Disabilities

The meeting will be held telephonically. If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting Department staff by email jennifer.strange@idwr.idaho.gov or by phone at (208) 287-4800.

Memorandum



To: Water Supply Bank and Mitigation Bank Committee
From: Remington Buyer
Date: December 18, 2020
Re: Committee Meeting No. 2-20

Action Item: The Committee may recommend approval of the draft legislation to create IC 42-1765B.

A Water Supply Bank (WSB; Bank) Committee meeting has been convened to hear an update on amendments to the Upper Snake River Rental Pool Procedures, a proposal for a new statute, Idaho Code 42-1765B, and whether and how the Boise River Rental Pool might be used to facilitate rentals for mitigation, if a raise of Anderson Ranch dam impacts the storage and allocation of water in Anderson Ranch Reservoir.

Amendments to the Upper Snake River Rental Pool Procedures

The Water District 01 Advisory Committee, the Committee of Nine (Co9), is the local committee appointed by the Idaho Water Resource Board (IWRB; Board) to facilitate leases and rentals of storage water from the Upper Snake River reservoir system. The Co9 has adopted rental pool procedures to govern the lease and rental of storage water from the rental pool. Amendments to the rental pool procedures are currently being discussed by the Co9's Rental Pool Subcommittee, chaired by Brent Bowen. Chairman Bowen will be present to brief the WSB Committee on proposed amendments to the procedures, along with Water District 01 Watermaster Tony Olenichak.

When the IWRB approved the latest iteration of the rental pool procedures earlier this year, they also issued a letter to the Co9, articulating their desire to work with the Co9, to address aspects of the procedures that were of concern. Of particular note, the IWRB had concerns that the moratorium on rentals to "new lands" and the prohibition on certain rentals for out-of-basin uses might be inconsistent with the mandate and obligations of the Water Supply Bank program. The Bureau of Reclamation also had concerns about the last-to-fill provisions of rentals of Palisades Reservoir powerhead storage water.

Much time and effort has gone into amending the rental pool procedures during the past few months and the Chairman and Watermaster deserve recognition for the work they've put in, working with other rental pool stakeholders, to propose amended language that increases clarity while improving flexibility in the rental pool procedures. Specifically, the current draft procedures appear to now allow for rentals of out-of-basin uses through an Assignment Pool, which is a newly proposed subset of the rental pool.

It appears that the prohibition (moratorium) on rentals to new lands remains in the rental pool procedures, and the last-to-fill provision on releases of Palisades powerhead storage, remain in the procedures. It was previously discussed with the IWRB that, if the moratorium language will remain in the rental pool procedures, then it would be helpful for the Co9 to propose metrics by which the IWRB and the Co9 might evaluate, on an ongoing basis, the effectiveness of the moratorium, to consider whether it should remain in effect, or be lifted, at a future time.

Creation of a new Water Supply Bank Statute, Idaho Code 42-1765B

The Water Supply Bank exists to facilitate voluntary leases and rentals of water rights in Idaho. The Idaho Water Resource Board (IWRB) is charged with operating the Bank, in coordination with the Director of the Idaho Department of Water Resources (IDWR). The Board can appoint local committees to facilitate voluntary water right leases and rentals from specific water sources and within specific geographic areas. Under Idaho Code 42-1765, the Board is authorized to appoint local committees, to facilitate the lease and rental of storage water associated with storage water rights in reservoir systems. Under Idaho Code 42-1765A, the Board is authorized to appoint a local committee, to facilitate the lease and rental of natural flow water rights in the Lemhi River basin.

Idaho Code 42-1765A does not authorize the appointment of local committees, to facilitate the lease and rental of natural flow water rights, outside the Lemhi River basins. The WSB Committee is being presented with draft legislation to create a new statute, Idaho Code 42-1765B, to allow for the appointment of natural flow water right lease and rental committees in river basins outside of the Lemhi River watershed, throughout the state. The Committee may recommend the IWRB provide support for the new statutory proposal.

The following are concepts for Committee and Board consideration, specific to the new statute:

1. The statute allows for the appointment of local committees, to facilitate leases and rentals of natural flow water rights, approved under the provisions of Water Supply Bank statutes and rules. However, the WSB Rules (IDAPA 37.02.03) do not yet include any provisions specific to the formation of local committees that may be appointed to facilitate the lease and rental of natural flow water rights.

The WSB Rules do specify requirements for storage water rental pool procedures (WSB Rule 40) and IC 42-1765A specifies the Lemhi River local committee should facilitate leases and rentals of natural flow water rights consistent with IC 42-1765 and WSB Rule 40. Perhaps the local committees appointed by the IWRB under the authorities of IC 42-1765B might similarly be required to develop lease and rental procedures, consistent with the rental pool statutes and regulations of IC 42-1765 and WSB Rule 40. Or, alternatively, perhaps the IWRB might desire to update the WSB rules to clarify provisions for procedures specific to natural flow water right local committees.

2. Idaho Code 42-1763 requires that all rentals of water rights from the Water Supply Bank be approved by the Director of IDWR, to ensure that rentals do not cause injury to prior appropriators, enlarge the water rights being rented, and to ensure rentals are consistent with any established local public interest criteria. It is unclear how natural flow water right lease and rental local committees will be coordinated, to provide for oversight of local committee decision making by the Director. An update to the WSB Rules could specify how the local committees should coordinate with the Director and IDWR staff, to ensure rentals are appropriately reviewed prior to approvals being made by local committees.
3. The draft legislation states "*each local rental committee shall have authority to rent water rights between consenting owners and consenting renters*". This language is similar to language in IC 42-1765A. Under procedures adopted by the Lemhi River Basin local committee, that local committee is authorized to approve leases for any period of time, and to rent water rights for up to one year. Presumably, a local committee that would be appointed by the IWRB under 42-1765B would similarly be required to develop procedures to specify how leases and rentals might be evaluated and approved by the local committee. It may be useful for the IWRB to consider whether the WSB Rules should be updated to clarify how water right lease and rental application processing might be conducted exclusively by future natural flow water right local committees, or, how processing might be coordinated with the Director of IDWR and water district watermasters.
4. What should these local branches of the WSB be called? Presently, within the Water Supply Bank program, "rental pools" exist for leases and rentals from storage water reservoir systems, and the "Board's bank" exists for the statewide leasing and renting of water rights generally. Will the new branches of the WSB created under the amended IC 42-1765B be called "*natural flow water right rental pools*", or "*local water banks*", or "*local water right banks*", or something else?
5. Is it important that natural flow water right local committees be appointed by the IWRB? In the time since the Lemhi River Rental Pool local committee was appointed, it seems to have only approved a single lease/rental transaction, though the Board's bank processes Lemhi River water right leases and rentals each year. It's not clear why the Board's bank is used to review and approve Lemhi River water right leases and rentals when these transactions might otherwise be approved by the Lemhi River local committee, through their rental pool. Similarly, [a minimum streamflow natural flow water right lease/rental local committee was established for the Big Wood River in 2007](#), known as the Wood River "Legacy Project" but the local committee was discontinued after five years.¹

¹ <https://legislature.idaho.gov/sessioninfo/2007/legislation/S1136/>

It's unclear whether establishing new natural flow water right lease/rental local committees will result in a change in the amount of water right leasing and renting than what is already occurring through the Board's bank. It's also unclear whether establishing natural flow water right local committees will have an impact on the administrative work undertaken by local water district staff.

Use of the Boise River Rental Pool, in association with the raising Anderson Ranch Dam:

If construction commences on Anderson Ranch dam, the Bureau of Reclamation (BOR; Reclamation) will need to forego storage and delivery of a defined amount of storage water in Anderson Ranch Reservoir during each year of construction. This will likely result in a shortage in the amount of storage water that would otherwise be allocated amongst water users who hold spaceholders contracts with Reclamation for water stored in Anderson Ranch Reservoir. Prior to the commencement of construction on Anderson Ranch Dam, Reclamation, or a third-party "project sponsor", may need to identify how water and/or financial payments should be distributed amongst impacted spaceholders, to mitigate for water shortages attributable to the Dam raise.

Mitigation could be achieved if some Boise Project spaceholders agreed to make some or all of their annual storage water allocations available to other spaceholders, during the construction period. Reclamation could also make available for mitigation some or all of its annual allocation of uncontracted storage in Boise Project reservoirs.

The Board might work with Boise Project spaceholders, to identify specific spaceholders who are willing to forego some or all of their annual allocations, during construction, so that this water could be reallocated amongst water users, for purposes such as mitigation. The Boise River Rental Pool could be used to facilitate the annual lease of storage from spaceholders identified by the Board, so that the storage could be rented out for mitigation purposes to water users impacted by the dam raise project.

It is worth noting that, if the points of diversion, places of use, season of use and nature of use of water that would be rented for mitigation purposes won't actually be diverted and used differently to how the Boise River reservoir water rights are decreed, then it may not be necessary to use the rental pool to facilitate mitigation rentals. Water users with spaceholder contracts in Boise River Reclamation facilities could, amongst themselves, reallocate their storage water allocations annually, and account for delivery of storage water through coordination with the Water District 63 staff, without needing to lease and rent storage water through the rental pool. However, for ease of administration, it might still be useful to use the Boise River rental pool to facilitate leases and rentals.



Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE – WATER RIGHTS AND
RECLAMATION CHAPTER 17
DEPARTMENT OF WATER RESOURCES – WATER RESOURCE
BOARD

42-1765B. LOCAL COMMITTEES – RENTAL OF ALL OTHER SOURCES OF WATER.

(1) The water resource board may appoint a local rental committee to facilitate the rental of all sources of water not included in rentals and stored water under Section 42-1765. The local rental committee may be separate from or combined with a local rental pool committee established under Section 42-1765, and shall operate in such geographic area as the board in its discretion deems appropriate given local conditions.

(2) Section 42-1765, Idaho Code, and the board's water supply bank rules, including the Director's evaluation of potential injury, shall apply to the operation of the local rental committees established under this section. In addition, the board may authorize the local rental committees to limit rentals to specified uses including: (a) mitigation or compliance with a mitigation plan, (b) compliance with a groundwater management plan, (c) managed recharge, (d) groundwater to surface water conversions, (e) partial season uses, and (f) such other limitations as the board in its discretion deems appropriate in a particular geographic area.

(3) When so appointed, each local rental committee shall have authority to rent water rights between consenting owners and consenting renters. In its designated geographic area.

(4) Rights to the use of water for a portion of the approved period of use under a water right may be accepted into the water supply bank and rented out by the local rental committee to satisfy board's minimum stream flow water rights authorized under title 42 chapter 15, Idaho Code, and any other purpose authorized by the board in subsection (2) above, provided the owner demonstrates to the satisfaction of the director that there will be an equivalent reduction in the extent of beneficial use under the right.